Senate



General Assembly

File No. 518

January Session, 2005

Senate Bill No. 795

Senate, April 26, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THIRD-PARTY LIABILITY FOR CONTAMINATED PROPERTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (Effective October 1, 2005) (a) Notwithstanding any 2 provision of the general statutes, and except as provided in this 3 section, no owner of real property shall be liable for any costs or damages to any person other than this state, any other state or the 4 5 federal government, with respect to any pollution or source of 6 pollution on or emanating from such owner's real property that 7 occurred or existed prior to such owner taking title to such property, 8 provided:
- 9 (1) The owner did not establish or create a condition or facility at or 10 on such property that reasonably can be expected to create a source of 11 pollution to the waters of the state for purposes of section 22a-432 of 12 the general statutes and such owner is not responsible pursuant to any 13 other provision of the general statutes for creating any pollution or

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14 source of pollution on such property;

- (2) The owner is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship, or any contractual, corporate or financial relationship other than that by which such owner's interest in the property was conveyed or financed; and
- (3) The Commissioner of Environmental Protection has approved in writing: (A) An investigation report regarding such pollution or sources of pollution, provided the investigation was conducted in accordance with the prevailing standards and guidelines by an environmental professional licensed in accordance with section 22a-133v of the general statutes; and (B) a final remedial action report prepared by a licensed environmental professional that demonstrates that remediation of such pollution and sources of pollution was completed in accordance with the remediation standards in regulations adopted pursuant to section 22a-133k of the general statutes. Prior to the initiation of an investigation or a remediation undertaken to meet the criteria of this section, an owner of the subject real property shall notify, by certified mail, the owners of the adjoining properties of such initiation. Such reports shall be forwarded, by certified mail, to the owners of the adjoining properties.
- (b) This section shall not relieve any such liability where (1) an owner failed to file or comply with the provisions of an environmental land use restriction created pursuant to section 22a-133o of the general statutes for such real property or with the conditions of a variance for the real property that was approved by the commissioner in accordance with regulations adopted pursuant to section 22a-133k of the general statutes, or (2) the commissioner, at any time, determines that an owner provided information that the owner knew or had reason to know was false or misleading or otherwise failed to satisfy all of the requirements of subsection (a) of this section. Nothing in this section shall be construed to relieve an owner of any liability for pollution or sources of pollution on or emanating from such property

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that occurred or were created after the owner took title to such property. Nothing in this section shall be construed to hold an innocent landowner, as defined in section 22a-452d of the general statutes, who meets the requirements of this section liable to this state for costs or damages in an amount greater than the amount that an innocent landowner may be held liable pursuant to section 22a-432 of the general statutes.

(c) If an owner of real property is found to be liable under this section because the owner is affiliated with the person responsible for the pollution or source of pollution, as provided in subdivision (2) of subsection (a) of this section, such owner shall be liable for a civil penalty of one hundred thousand dollars or the cost of remediating the pollution or source of pollution, whichever is greater.

This act shall take effect as follows and shall amend the following sections:				
Section 1	October 1 2005	New section		

ENV Joint Favorable C/R JUD

JUD Joint Favorable

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The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Resources of the General Fund	GF - Revenue	Potential	Potential
	Gain	Significant	Significant
Department of Environmental	Various - None	None	None
Protection			

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill exempts under certain conditions, property owners from liability, except to a state or the federal government, for costs or damages resulting from pollution that occurred before the owner took title to the property. The limit on liability is not anticipated to result in increased costs to the state.

The bill establishes a civil penalty of \$100,000 or the cost of remediation whichever is greater. A potential significant revenue gain to the General Fund could result.

The bill has no fiscal impact on the Department of Environmental Protection.

OLR Bill Analysis

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AN ACT CONCERNING THIRD-PARTY LIABILITY FOR CONTAMINATED PROPERTY

SUMMARY:

This bill relieves a property owner of liability, except to a state or the federal government, for costs or damages resulting from pollution that occurred or existed before he took title to the property, if (1) the owner did not cause, or create a condition that could reasonably be expected to cause, the pollution; (2) the owner is not affiliated with the person responsible for the pollution; and (3) the Department of Environmental Protection (DEP) commissioner has approved certain reports concerning the pollution.

The bill specifies when an owner may still be found liable, and imposes a civil penalty on an owner found to be affiliated with a person responsible for polluting his property.

It requires a property owner to notify adjoining property owners before (1) investigating the property for pollution or (2) remediating it.

An innocent landowner who complies with the bill's requirements cannot be held liable to the state for costs or damages in an amount greater than that for which he would be liable under a lien imposed against his property.

EFFECTIVE DATE: October 1, 2005

RELIEF FROM LIABILITY

The bill relieves a property owner of liability for costs and damages, except to any state or the federal government, resulting from pollution that occurred or existed before he took title, if:

1. the owner did not create a condition or facility at or on the property that could reasonably be expected to pollute state waters or create any pollution or source of pollution;

2. the owner is not related to the person responsible for creating the pollution or source of pollution either through direct or indirect family ties or a contractual, corporate, or financial relationship, other than that by which the owner's interest in the property was conveyed or financed; and

3. the DEP commissioner has approved, in writing, (a) an investigation report of pollution and pollution sources that existed or took place before the property owner took title to the property, conducted by a licensed environmental professional (LEP) according to prevailing standards and guidelines, and (b) the LEP's final remedial action report demonstrating that the site was properly remediated.

The first provision apparently would exclude from the bill's provisions a landowner operating a permissible source of pollution, such as someone with a DEP air or water discharge permit.

Under the bill, an owner found to be affiliated with someone responsible for pollution on his property faces a civil penalty of either \$100,000 or the cost of remediating the property, whichever is more.

INSTANCES WHERE AN OWNER REMAINS LIABLE

Under the bill, an owner is still liable if:

- 1. he failed to comply with the terms of an environmental land use restriction or the conditions of a variance that the DEP commissioner approved;
- 2. the commissioner determines that he provided false or misleading information, or otherwise failed to comply with the bill; or
- 3. the pollution occurred after he took title to the property.

NOTIFICATION OF ADJOINING PROPERTY OWNERS

The bill requires a property owner to send adjoining property owners, by certified mail, (1) notice that he is going to start investigating or remediating the property and (2) the LEP's investigation and final

remedial action reports.

BACKGROUND

Innocent Landowner

By law, an innocent landowner is someone who owns land on which a spill or discharge occurred if the spill is caused solely by:

- 1. an act of God;
- 2. an act of war; or
- 3. an act or omission of a third party, other than an employee, lessee, or agent of the landowner, or someone with a contractual relationship with the landowner, unless the landlord had reason to know of the spill and failed to take reasonable steps to prevent it.

An innocent landowner also can be someone who acquires land after contamination has occurred, if he is not responsible for the pollution, and at the time of acquisition he (1) had no knowledge of the contamination and inquired into previous uses of the property consistent with good commercial or customary practice, (2) acquired the property by inheritance or bequest, or (3) acquired the interest as executor or administrator of a decedent's estate.

COMMITTEE ACTION

Environment Committee

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Joint Favorable Change of Reference
Yea 28 Nay 0
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Judiciary Committee

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Joint Favorable Report
Yea 37 Nay 0
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